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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

HONGKHAM SOUVANNARATH, Plaintiff and Respondent, v. DAVID HADDEN et al. Defendants and Appellants.	F035228 (Super. Ct. No. 633425-4) **O P I N I O N**

APPEAL from a judgment of the Superior Court of Fresno County. Donald S. Black, Judge.

Phillip S. Cronin, County Counsel, and Juliana F. Gmur, Deputy, for Defendants and Appellants.

Catherine Campbell for Plaintiff and Respondent.

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STATEMENT OF THE CASE

This is an appeal from a judgment directing the issuance of a writ of mandate. From July 30, 1998, to May 27, 1999, respondent Hongkham Souvannarath was detained in the Fresno County jail pursuant to an Order of Quarantine and Isolation signed by appellant/defendant Dr. David Hadden, the Fresno County Health Officer. The detention was based upon Souvannarath's noncompliance with the plan prescribed to treat her multi-drug resistant Tuberculosis (TB). On June 10, 1999, after her release, Souvannarath filed a Petition for Writ of Mandate in Fresno County Superior Court. Relying upon Health and Safety Code[1] sections 121364, 121365, 121366 and 12358,[2] she sought an order directing appellant/defendant Fresno County (County) to desist from placing noncompliant TB patients such as Souvannarath in the county jail. The petition was amended on June 29, 1999, to include a request for attorney's fees pursuant to Civil Code section 1021.5. The petition also named, as defendants, appellants Betty Tarr, the Division Manager of Fresno County Health Services Agency (Department), Dr. Michael J. Reynolds, the Public Health Physician and County TB Control Officer, and Fresno County Sheriff Richard Pierce.[3]

After four days of hearing and full briefing by the parties, the trial court issued its statement of decision on January 19, 2000. The court found that section 121358 precluded the use of the jail as a detention facility for noncompliant TB patients and concluded there was no evidence County had complied, or would in the future comply, with the procedural requirements of the relevant statutes. The court rejected appellants'

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[1] All further references are to the Health and Safety Code unless otherwise noted.

[2] The cited sections are part of the state's TB Control Statute. (Health & Saf. Code, Part 5, ch. 1, § 121350, et. seq.)

[3] All defendants/appellants will be referred to collectively as "appellants" unless otherwise noted.

argument that recent changes in policy insured County's future adherence to the law and made the issues raised by Souvannarath's petition moot. The trial court ordered issuance of a writ of mandate, and judgment was entered on February 14, 1999.

On the same date, Souvannarath filed a motion for attorneys fees. By order dated April 13, 2000, fees were awarded to her, including a multiplier of 1.1.

Appellants have filed a timely notice of appeal from both the writ order (No. F035228) and the fee order (No. F036026). The two appeals were consolidated by this court on September 19, 2000.

STATEMENT OF FACTS

TB is a resilient bacterial disease which is airborne and highly contagious and thus presents a significant risk to public health. When the disease becomes multi-drug resistant, generally from the interruption of medications, the public is exposed to a more dangerous threat and the infected person faces a more serious illness, sometimes death. Effective treatment of a patient infected with multi-drug resistant TB can take months and a relapse is possible within two years. A patient who fails to take medication for the disease will ultimately become contagious.

Under County's policy, any person infected with a communicable disease who resists treatment and becomes a public health hazard may be detained in the Fresno County jail. The decision to incarcerate ultimately rests with Hadden and is made after consultation with a team of individuals, including Tarr, Reynolds, nurses, translators, and other employees of County's TB control program. Fewer than 20 people have been so detained since 1995 in Fresno County.

The current procedures which govern the control of TB in Fresno County are derived from the applicable portions of the Health and Safety Code and other written guidelines offered to local health authorities, including the "Guidelines for the Civil Detention of Persistently Non-Adherent Tuberculosis Patients in California"

(Guidelines). The Guidelines are promulgated by the State Department of Health Services (DHS) under the authority of section 121455.

Under the TB control statutes, TB patients who refuse treatment or who do not comply with an ordered treatment program may be detained. In Fresno County, a detainee is first taken to the chest clinic at University Medical Center (UMC) to determine if he or she is infectious. Patients found to be infectious are retained at UMC. Patients found not to be infectious and not to have other health concerns such as mental illness or substance abuse are detained in the county jail, where treatment is provided through or at the chest clinic. TB detainees are governed by the same security policies and restrictions that govern other jail inmates, including stringent restrictions on visitation, on materials coming into the jail, on possession of comfort items such as pillows and blankets, and on privacy and exercise.

No formal survey has been made to determine whether potential facilities other than the county jail are available in Fresno County as a place of detention for noninfectious, recalcitrant tuberculosis patients, and, according to Tarr, none exist. However, there are facilities available outside the county. A civil detention facility has been operating in San Mateo County since 1998, but County has not been permitted to place detainees at this facility because the required Memorandum of Understanding has not been concluded between County and the facility.

County has never assessed whether the conditions in the jail meet the criteria found in the relevant state TB control guidelines or statutes. The Guidelines in part provide that the conditions of detention must be as therapeutic as possible and include such components as appropriate medical therapy, case management, discharge planning,

24-hour security, recreation facilities, mental health counseling, visiting privileges, and other accommodations consistent with the needs of the patients.[4]

Souvannarath is Laotian and speaks little English. She was diagnosed with TB in January 1998. A month later she was found to have multi-drug resistant TB, which required the intravenous administration of medication and treatment at the chest clinic. In July 1998, County concluded Souvannarath was not complying with the ordered treatment program.

On July 23, 1998, County served Souvannarath with a Notice and Order for Examination, in English, and told her she was required to appear at the chest clinic on July 28 or risk being detained for continued noncompliance. Souvannarath failed to appear at the chest clinic on the 28th. As a result, Hadden, in consultation with Tarr and Reynolds, signed and issued an Order of Quarantine and Isolation, dated July 29, 1998, which directed that Souvannarath be detained in the county jail until she completed the prescribed course of treatment, which might extend for two years. Hadden's order did not state any specific reason for the detention nor did it contain a statement of Souvannarath's rights under the TB control laws to request release, to a hearing, and to court appointed counsel.

On July 30, 1998, Souvannarath was taken at gun point to the county jail, after being told she was being taken to the hospital. When she arrived and recognized the jail, she refused to get out of the County van until she was told she would be carried in bodily if she did not submit voluntarily. She was crying, as were her two daughters who had ridden in the van with her. She was strip-searched and forced to undress. She was

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[4] In addition, patients who are infectious must be kept in a negative airflow room. Such a room is available at University Medical Center and Kaiser Hospital but not at the jail.

initially housed in a safety cell for three days, because a Hmong officer mistranslated her Laotian comment that she was afraid to die as a suicide threat. The safety cell had no water, heat, light, bed or toilet. Thereafter, she was housed in the infirmary, where she was expected to clean up after other present inmates and was threatened by some of them. Ultimately, she was placed with the general inmate population.

Souvannarath ate the same food as the general population inmates. Only one guard occasionally provided translation services. She was unable to communicate her needs to jail personnel. All during her incarceration, Souvannarath was ill, sometimes more so than others.

Souvannarath was subject to the same restrictions as those imposed upon all jail inmates. She was allowed visits for a half hour twice weekly. A glass security barrier separated her from her family, who visited on each permitted occasion. She was allowed to make only collect, surcharged telephone calls. She was handcuffed and shackled at her wrists, ankles and waist whenever she was taken from the jail to outside locations, such as the clinic or the hospital. When she was in the hospital, she was chained to a bed.

On May 17, 1999, after the Fresno County Counsel's Office became involved in the matter, Souvannarath was served with a new notice of detention and her case was set for hearing on the superior court's calendar by means of a County petition for an order of continued detention. The new notice was intended to correct the documentary and procedural errors inherent in the original notice and the prior handling of Souvannarath's case. Counsel was appointed for Souvannarath. At a May 27, 1999 hearing, the parties agreed that Souvannarath would be released from jail and placed on electronic monitoring. She was later threatened with rearrest when negotiations broke down between County and Souvannarath's counsel concerning when and who she was to see for medical treatment. At a review hearing on July 19, 1999, the parties stipulated to Souvannarath's unconditional release from detention.

After the county counsel's office became involved in Souvannarath's case, the Department developed new forms for use in civil detention cases under the TB control laws. These new forms were intended to both comply with the provisions of such laws regarding the content of required notices and other documents and papers and to ensure County's future compliance with the procedures directed by those laws.

DISCUSSION

I. Standard of Review

Traditionally, mandamus is sought to enforce a nondiscretionary duty to act on the part of a court, an administrative agency, or officers of a corporate or administrative agency. (Code Civ. Proc., § 1085; *San Elijo Ranch, Inc. v. County of San Diego* (1998) 65 Cal.App.4th 608, 612; *Timmons v. McMahon* (1991) 235 Cal.App.3d 512, 517-518.) Two requirements are essential to the issuance of a writ of mandate under Code of Civil Procedure section 1085: (1) that the respondent have a clear, present, and usually ministerial, duty to act; and (2) that the petitioner have a clear, present, and beneficial right to performance of that duty. (*Monterey Mechanical Co. v. Sacramento Regional County Sanitation Dist*. (1996) 44 Cal.App.4th 1391, 1414; *Hutchinson v. City of Sacramento* (1993) 17 Cal.App.4th 791, 796.) Mandate will not issue to compel action unless it is shown the duty is unmixed with discretionary power or the exercise of judgment. (*Hutchinson v. City of Sacramento, supra,* 17 Cal.App.4th 791, 796.) Thus, a petition under Code of Civil Procedure section 1085 may only be employed to compel the performance of a duty which is purely ministerial in character. (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501.) In addition, a petitioner is required to show there is no adequate remedy at law available to cure the claimed harm. (See *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1271-1275.)

In reviewing a trial court's ruling on a writ of mandate, an appellate court is "ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. [Citation.]" (*Saathoff v. City of San Diego*

(1995) 35 Cal.App.4th 697, 700.) However, if the question is of a legal nature, such as the interpretation or construction of a statute, and the facts are undisputed, the appellate court must address the legal issues de novo. (*Dolan-King v. Rancho Santa Fe Assn*. (2000) 81 Cal.App.4th 965, 974; *Rodriguez v. Solis, supra,* 1 Cal.App.4th at p. 502.)

II. Statutory Scheme

California's Health and Safety Code contains within it provisions dedicated to the care and control of serious communicable diseases. Chapter 3 of Part I describes the functions and duties of the local health officer (§§ 120175-120250) and gives this official authority to order various actions, including an order for examination of a person thought to be infected and an order of quarantine for such person in a secure "building, house, structure or other shelter." (§ 120225). In Chapter 4 of Part I, a violation of a valid order of a local health official authorized to so act under the Health and Safety Code is made a misdemeanor subject to criminal penalties, including fines and/or incarceration in the county jail. (§§ 120275 and 120280.)

Chapter 1 of Part 5, commencing with section 121350, deals specifically with TB control. It was enacted in 1995 and contains a variety of provisions addressing the care, detention and release of TB patients at the county level. (Stats. 1995, c. 415 (S.B. 1360).) Section 121365 requires each local health officer to investigate all active cases of TB in his or her jurisdiction. The same section allows the local health officer to issue any orders deemed necessary to protect the public health, including orders for examinations, for detentions in a health facility or other treatment facility, and for a prescribed course of treatment. (§ 121365.) The section also expressly authorizes the detention of an individual when there is a "substantial likelihood, based on the person's past or present behavior, that he or she cannot be relied upon to participate in or complete an appropriate prescribed course of medication for tuberculosis disease and, if necessary, follow required infection control precautions for tuberculosis disease." (§ 121365.) The "past or present" behavior which will support detention under the section includes the refusal

or failure to take medication, to keep appointments, to complete treatment, or to comply with infection control precautions. (§ 121365.)

Section 121366 allows a local health officer to place a noncompliant TB patient subject to a section 121365 detention order "in a hospital or other appropriate place for examination or treatment." Though such a placement may be ordered by the local health officer without prior court authorization, the statute imposes a number of conditions and restrictions upon a detention, as follows:

> "[W]hen a person detained pursuant to subdivision (a), (d), or (e) of Section 121365 has requested release, the local health officer shall make an application for a court order authorizing the continued detention within 72 hours after the request or, if the 72-hour period ends on a Saturday, Sunday, or legal holiday, by the end of the first business day following the Saturday, Sunday, or legal holiday, which application shall include a request for an expedited hearing. After the request for release, detention shall not continue for more than five business days in the absence of a court order authorizing detention. However, in no event shall any person be detained for more than 60 days without a court order authorizing the detention. The local health officer shall seek further court review of the detention within 90 days following the initial court order authorizing detention and thereafter within 90 days of each subsequent court review." (§ 121366)

Section 121367 directs that an order issued under section 121365 must contain the following, among other things:

1. A statement of the legal authority under which the order was issued,
2. An individualized assessment of the circumstances or behavior upon which the order was based,
3. A description of the less restrictive treatment alternatives attempted or considered and the reasons why such alternatives were either unsuccessful or rejected,
4. A statement of the period of time during which the order will remain effective,
5. A notice that the person detained may request release and that detention may not be continued for more than 5 days in the absence of a court order if release is requested,

6. A notice that the local health officer is required to obtain a court order authorizing the detention within 60 days after commencement of the detention and thereafter seek court review of the detention at 90 day intervals,

7. A notice that the detainee has a right to counsel, either retained or provided. (§ 121367.)

The section also requires that the order be accompanied by a separate notice which tells the detainee about the right to request release, the five-day limit on the detention in the absence of a court order, and the right to counsel, as well as the right to select not more than two individuals to be notified of the detention by the local health officer. (§ 121367.)[5]

In 1997, section 121358 was added to Chapter 1 of Part 5; it reads:

> "(a) Notwithstanding any other provision of law, individuals housed or detained through the tuberculosis control, housing, and detention program *shall not reside in correctional facilities*, and the funds available under that program with regard to those individuals shall not be disbursed to, or used by, correctional facilities. This section shall not be interpreted to prohibit the institutionalization of criminals with tuberculosis in correctional facilities.
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> "(b) The department shall work with local health jurisdictions to identify a detention site for recalcitrant tuberculosis patients appropriate for each local health jurisdiction in the state. The department shall notify all counties of their designated site by January 1, 1998." (Emphasis added.)

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[5] Section 121368 puts additional limits on the detention, including the provision that a person detained pursuant to section 121365, subdivision (e) cannot be held once he or she has completed an appropriate prescribed course of medication. Sections 121369 and 121370 address language and religious concerns. Other sections of Chapter 1 of Part 5 deal with record keeping, burial expenses, reporting, funding, and out of county confinement. (§§ 121390, 121395, 121400, and 121450.) Section 121455 provides that DHS may establish standards and procedures for the operation of the local tuberculosis control program.

III. Mootness

At the hearing on Souvannarath's petition, the parties stipulated that (1) the forms and notices under which her detention was authorized and maintained did not comply with the relevant provisions of the TB Control statutes, (2) prior to the hearing, County had changed its forms and notices to bring them into compliance with the statutes, including a fax form to be used by the chest clinic to notify county counsel of the potential issuance of a detention order with respect to a noncompliant patient and another fax form to be used by the chest clinic to notify county counsel of a detainee's request for release; and (3) the revised forms and notices would be used in connection with the future detention of noncompliant TB patients. On the basis of these facts, appellants contend, as they did in the trial court, that the issues raised by Souvannarath's petition were moot and therefore that the trial court erred when it failed to dismiss the petition on this ground

The trial court refused to dismiss the action and addressed the issues presented by the petition on their merits. The trial court concluded, among other things, that, although the Department had made effective changes and additions to the relevant forms and notices, its adherence to the procedural aspects of the statutes could not be assured absent court order. In its statement of decision, the trial court observed in part:

> ". . . Petitioner apparently does not dispute that the forms, as redrafted, comply with the statutory requirements. Even so, the fact that the forms have been redrafted does not end the inquiry with regard to the procedural issues. County must still comply with all of the procedural due process requirements mandated by the statutory scheme. For example, where the detainee has requested release under Section 121366, the County must affirmatively act to obtain a court order authorizing a detention within 72 hours or comply with the request. Given County's failure to provide these protections in the instant case and the inability of its witnesses to state that such protections have been provided to other persons detained under the statute, there is no assurance that they will be provided in the future unless an appropriate order issues."

The court also said:

> "Although County has redrafted the forms so that they comply with the requirements of the statute, it is more equivocal with regard to the issue of whether and how future detainees will be afforded the procedural protections required by the statute. Those County employees who testified did not have a clear understanding of whose responsibility it is to ensure that future detainees are provided all of the procedural protections required by the statute. This is particularly important in cases involving TB where it appears to be the case that many of the detainees do not speak English and are not familiar with the protections provided by the American legal system."

Generally, a court is not obligated to decide issues raised by an action that have become academic by virtue of some pre-judgment act or event. (See *Wilson v. L.A. County Civil Service Com*. (1952) 112 Cal.App.2d 450, 453; *Save Oxnard Shores v. California Coastal Com*. (1986) 179 Cal.App.3d 140.) Nevertheless, when a legal proceeding presents a likely recurring question of public interest, a court has the inherent discretion to resolve what would otherwise be a moot issue. (See *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747.)

We agree with the trial court that the issues raised by Souvannarath's petition were not restricted to the technical adequacy of the contents of the Department's forms, notices and inter-office communications and instead implicated appellants' compliance -- or better, lack of compliance -- with the duties imposed upon them by the relevant statutes beyond the mere giving of the statutory notices and advisements or the preparation of fax forms intended to be sent from the chest clinic to county counsel.

We pointed out earlier that section 121366 requires that a detention cannot exceed the initial 60 days without court authorization, whether or not the detainee requests release, and cannot exceed five days without court order when the detainee requests release. The statute without ambiguity puts the burden upon the local health officer to timely obtain the necessary judicial authorization. (§ 121366.) This requirement of judicial review is not something unique to the TB control statutes or peculiar to the Health and Safety Code; it is a manifestation of the fundamental principle of due process,

a hallmark of the constitutional government of this state and this nation. (See U.S. Const., 14th Amend. [no deprivation of liberty without due process of law]; *People v. Birks* (1998) 19 Cal.4th 108, 121 [Cal. Const., art. I, § 15, requires accurate fact-finding procedures leading to deprivation of personal liberty.]; *In re Rose* (2000) 22 Cal.4th 430, 456 [due process requirements include notice and a meaningful opportunity to be heard]; *People v. Superior Court (Butler)* (2000) 83 Cal.App.4th 951, 965 [due process standards for civil litigants].)

Despite the clear directions regarding the necessity for judicial authorization set out in section 12367 and the underlying core notion of due process imbedded in the more than 200 years of this Nation's history, County held Souvannarath against her will in the jail for some ten months, not only *without court approval* but without even *seeking court approval*. The explanation for this event is found in the testimony of Hadden, Reynolds and Tarr, the public officials involved in the detention.[6] Hadden, whose signature resulted in Souvannarath's illegal detention, testified he did not consider the legal ramifications of his order. He also said he was unaware whether Souvannarath's case or any other case was presented at court for the periodic reviews required by the statute.

Reynolds, the physician who sought Hadden's signature on the detention order, did not acknowledge in his testimony at any point that continued detention, whether beyond 5 days or 60 days, was not within the authority of Hadden or any other county official. Reynolds testified he had been asked by Souvannarath's two sons to release her and that at least one attorney had called to inquire about why Souvannarath was being held. Reynolds told the attorney that Souvannarath was being detained pursuant to "state

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6 Pierce testified he was required to accept at the jail all persons detained on a lawful order. However, as this record shows, Souvannarath was not being held under a "lawful" order after the relevant time set out in section 121366 for the securing of judicial authorization had passed.

law," and that she would be held until her treatment was complete. He did not mention to Souvannarath's sons the statutory procedures requiring court authorization and periodic court review, even if he was aware of these provisions.

Finally, Tarr testified that she did not "dwell into people's legal issues" and did not know about "due process" which she believed fell within the realm of "legal assistance." Although Tarr testified the Department's then-current policy was to converse with County's legal team when considering a detention, she also characterized "legal advice" as simply the provision of forms. She exhibited little or no knowledge of the conditions attached to the Department's authority to detain under the TB Control statutes and no knowledge of any requirement for timely judicial authorization of a detention. She asserted that the Department "just ... follow[ed] State ... laws," but never said anything that reflected any knowledge on her part about "State law" or about the fact that the Department was in violation of it in detaining Souvannarath without court authorization.

We appreciate that Hadden, Reynolds, and Tarr are medical professionals and not lawyers. However, as public officials they must be held to know the basic provisions of the laws which empower them and govern the exercise of their particular offices and duties. In this case, Souvannarath proved at the hearing that appellants did not then comprehend their responsibility under section 121367 to take the initiative and seek court authorization, within 5 or 60 days, as a precondition to the continuance of any section 121365 detention, including Souvannarath's, regardless of whether the contents of the forms and notices delivered to detainees, past or future, complied with section 121367.

In addition, although appellants at the hearing introduced the two new fax forms prepared for use by the chest clinic in notifying county counsel of certain events in potential or actual detention cases, there was no evidence that the chest clinic had either used such forms properly in cases subsequent to Souvannarath's or had ever been trained to use such forms. It is one thing to adopt adequate forms and systems, but it is quite

another to implement them consistently in accord with the pertinent statutory mandates. There was no evidence that any responsible person at the chest clinic had been instructed in the use of the faxes or in the requirements of section 121366 regarding the necessity of judicial authorization for a continued detention, and there was no evidence that appellants had in place any means by which to monitor the chest clinic's use of the faxes. As we have explained, neither Hadden, Reynolds, nor Tarr, the health officers presumptively responsible for supervising the chest clinic's activities, possessed as of the time of hearing -- which was after the faxes had purportedly been available for use by the chest clinic -- any knowledge of the contents of, or the scope of their responsibilities under, the relevant statutes, including section 121366. In addition, neither of the two fax forms appear to have dealt with the situation where 60 days has elapsed since the detention, a circumstance requiring the health officer to seek judicial authorization in order to continue a detention whether or not the detainee has requested release. All of these facts taken together surely entitled the trial court to be skeptical about whether the mere existence and distribution to the chest clinic of the two fax forms would be sufficient to insure that the terms of the section regarding judicial authorization would be scrupulously followed thereafter.[7]

In sum, the factual record supports the trial court's decision that merely correcting and adding to County's documentation did not moot the question whether appellants had corrected or would correct their actual practices to insure compliance with the affirmative duties imposed upon them by section 121366 to seek judicial authorization for detentions within the time limits expressed in this statute. The trial court could rationally have

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[7] One might also question whether the chest clinic was the proper office to take the lead in notifying county counsel of detentions, particularly where the detainee has not requested release within 60 days of the commencement of the detention.

concluded that the lack of knowledge on the part of Hadden, Reynolds and Tarr of the provisions of the statute, and their apparent disinclination to acquire knowledge of it, presaged their disregard of it in the future, notwithstanding the existence of the new forms and faxes. Consequently, the trial court's refusal to dismiss Souvannarath's petition as moot was not error.

IV. Section 121358

Appellants contend section 121358 does not prohibit the use of the jail to detain noncompliant TB patients because the statute was intended to have nothing more than a fiscal effect. According to appellants, the goal of the statute, to discourage counties from using jails to house TB detainees by withdrawing state funding from the counties for such use, was effectuated because no state funds were used to support the detention of TB patients, including Souvannarath, in the Fresno County jail.

We need go no further than the words of the statute. Section 121358 states without qualification or condition that persons "housed or detained through the tuberculosis control, housing, and detention program *shall not reside* in correctional facilities." (§ 121358, emphasis added.)[8] The words "shall not" are as unambiguous as any two contiguous words in the English language can be and they cannot rationally be misunderstood. Where the language of a statute is clear, its plain meaning must be effectuated. (*Great Lake Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 155; *Leroy T. v. Workmen's Comp Appeals Bd.* (1974) 12 Cal.3d 434, 438; *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1010.)

The clause in section 121358 which prohibits the use of state TB funding to support jail detentions does not overcome the clause which prohibits jail detentions or

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[8] The section also makes it clear that the prohibition relates only to civil detainees and not to criminal detainees who may also be TB patients.

compel a construction of the statute which makes such detentions elective at the county level. Appellants want us to read the statute as if it contained only the prohibition against the use of state money to support jail detentions. But the statute obviously is not so written. (See *County of Sacramento v. Superior Court* (1971) 20 Cal.App.3d 469, 472 [The courts cannot construe a statute so as to omit a portion].) Instead, the jail detention ban exists, at the forefront of the section. The subsequent funding ban is linked to the jail detention ban by the conjunction "and," which commonly means "along with" or "together with" (Webster's Third New Internat. Dict. (1986) p. 80). This grammatical structure means the jail prohibition must be given at least equal dignity with the funding prohibition. (See *People v. One 1940 Chrysler Coupe* (1941) 48 Cal.App.2d 546, 549 [The ordinary rules of grammar must be followed so long as the result is not an absurdity].)

The last sentence of subdivision (a) supports this construction; it requires that section 121358 "not be interpreted to prohibit the institutionalization of criminals with tuberculosis in correctional facilities." This explanatory provision would appear to be superfluous if the Legislature did not intend to forbid jail detentions of noncompliant TB patients when done at county rather than state expense. If the Legislature found it necessary to point out that a certain type of TB patient -- i.e., one who is also a criminal -- was not subject to a prohibition against jail detention contained in subdivision (a) of the section, then the Legislature must have thought it included in subdivision (a) of the section a prohibition against jail detention that applied to another type of TB patient -- i.e., one who is not also a criminal.

Moreover, we can perceive in the funding provision a rational legislative aim not inconsistent with the purpose or effect of the jail provision. The Legislature could reasonably have determined that the express withdrawal of state funding was an emphatic means by which to insure that counties would not be tempted to disregard the jail ban for purposes of expedience or economy.

The reference in the statute to "the tuberculosis control, housing, and detention program" does not, as appellants assert, restrict the application of section 121358 to only "state" DHS tuberculosis control schemes, nor does it distinguish between the "state" program and the County's purported "local" program, authorized, in appellants' view, by the grant in sections 121365 and 121366 to local health officers, as opposed to a state officer, the discretion to select the appropriate place to detain and treat recalcitrant TB patients.

First, it is nonsense to postulate, as appellants do, that the Legislature inserted, into chapter 1 of part 5, a statute, section 121358, which was and is entirely irrelevant and inapplicable to everything else contained in chapter 1 of part 5. As we explained earlier, chapter 1 of part 5 sets up a two-level, statewide program for TB control, with the state as the "lead agency" charged with the administration of state funds made available for the care of TB patients. (§§ 121350, 121357.) The local health officer, however, is given responsibility to carry out the mandates of the TB control statutes and to implement at the county level the state's TB control program, including the detention and housing of noncompliant patients. (§§ 121361, 121365, 121366.) The Legislative declaration found in section 121360 itself reflects that the counties are the intended focus for the implementation of the statewide program; the declaration states in relevant part that "all proper expenditures that may be made by any *county*," pursuant to chapter 1 of section 5, are "necessary for the preservation of the public health of the *county*." (§ 121360.) If there is in effect any separate "state" DHS tuberculosis program authorized by the Legislature, it is nowhere the subject of chapter 1 of part 5.

Appellants acknowledge they are subject to relevant provisions of chapter 1 of part 5 other than section 121358. The order of detention for Souvannarath was issued under the authority granted by sections 121365 and 121366 to local health officials such as Hadden, and appellants have argued in part on this appeal, as they argued in the trial court, that Souvannarath's petition should have been dismissed as moot because

appellants demonstrated they were in compliance with section 121367, which prescribed the required contents of detention orders and notices. Appellants have given us no persuasive reason or authority which supports their desire to avoid the constraints of section 121358.

Second, section 121358 commences with the words "Notwithstanding any other provision of law." This phrase has a special legal connotation; it is considered an express legislative intent that the specific statute in which it is contained control in the circumstances covered by that statute, despite the existence of some other law which might otherwise apply to require a different or contrary outcome. (See *McClatchy Newspaper v. Superior Court* (1988) 44 Cal.3d 1162, 1182; *People v. DelaCruz* (1993) 20 Cal.App.4th 955, 963; *In re Marriage of Dover* (1971) 15 Cal.App.3d 675, 678, fn. 3.) Thus, although a local health officer may have been granted broad general discretion under chapter 1 of part 5 to select the place of detention for noncompliant TB patients, that discretion was intended by the Legislature to be circumscribed by the flat prohibition against jail detention contained in section 121358. (*Bailey v. Superior Court* (1977) 19 Cal.3d 970, fn. 10, at pp. 978-979.)

If there were any ambiguity in section 121358 -- and we do not find any -- it would be resolved by the legislative history of the statute.[9] (*Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 813 ["The courts must give statutes a reasonable construction which conforms to the apparent purpose and intention of the lawmakers"]; *Tyrone v. Kelley* (1972) 9 Cal.3d 1, 10-11 [A statute must be read so as to conform with legislative intent].) First, the legislative materials indicate that section

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[9] Appellants have requested that we take judicial notice of the legislative history of section 121358 which they provided the court in their request filed July 11, 2000. We hereby grant the request.

121358 was intended to be applicable to detentions authorized under chapter 1 of part 5 of the Health and Safety Code. The Legislative Counsel's Digest summarized the bill which led to the enactment of the section as one that would "prohibit individuals housed under *this program*, other than criminal offenders, from residing in correctional facilities." (Legis. Counsel's Dig., Sen. Bill No. 391 (1996-1997 Reg. Sess.), ch. 294, emphasis added.)[10] According to the Digest, the "program" referred to is the "tuberculosis control, prevention, and detention program" which is administered by the DHS "*and each county*." The Digest's description is consistent with the Enrolled Bill Report prepared by the Department of Finance, which states that the bill approved the administration's proposal to *expand housing opportunities* for TB patients unwilling to complete prescribed drug treatments, and amended the statutory scheme to require "(1) that patients housed solely for *TB treatment purposes* may not be housed in correctional facilities, (2) that none of the funds may be paid to such facilities, and (3) that DHS work with local health jurisdictions to identify detention sites and notify all counties of their designated sites by January 1, 1998." (Dept. of Fin., Enrolled Bill Rep. on Sen. Bill No. 391, Stats. 1997, ch. 294, Aug. 13, 1997, p. 8.)

Second, the Legislature apparently refused to enact a proposed version of the statute which would have permitted the housing of recalcitrant TB patients in the jails. (See *Rich v. State Board of Optometry* (1965) 235 Cal.App.2d 591, 607.) The Enrolled Bill Report prepared by the Department of Finance also mentioned the prohibition in the bill against the use of state funds for jail detentions and then noted that "[a]lthough it is not DHS's plan or intent to acquire jail beds with these funds, local health officers

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10 The digest constitutes the official summary of the legal effect of the bill and is relied upon by the Legislature throughout the legislative process. Thus, it is recognized as a primary indication of legislative intent. (See *Eu v. Chacon* (1988) 16 Cal.3d 465, 470; *People v. Superior Court* (1969) 70 Cal.2d 123, 129.)

advised DHS against this restrictive language since it would limit local flexibility in placing TB patients in the event jail beds are the only beds available for this new program." (*Id.* at pp. 8-9.) It would thus seem that, despite the concerns of DHS and local health authorities that a funding restriction would prevent counties from using jail beds to detain noncompliant TB patients, the Legislature rejected the proposition that jail was an appropriate place to detain TB patients and instead passed the statute with the express bar against such detentions.

We recognize that the legislative history of section 121358 includes The Enrolled Bill Report prepared by DHS which stated in part that the bill would forbid the use of tuberculosis funding for detaining nonadherent TB patients in correctional facilities. (Dept. of Health Services, Enrolled Bill Rep. of Sen. Bill No. 391, Stats. 1997, ch. 294, Aug. 14, 1997, p. 3.) To the extent this brief comment may be seen as supporting the construction of the statute advanced by appellants, it is inconsistent with the balance of the relevant legislative history and does not support a reading of the statute *as enacted* which effectively obliterates the direct, unambiguous jail prohibition the law contains. Moreover, given DHS's support for a law that would have allowed use of jail to detain TB patients, it is not surprising DHS's report on the bill focused solely on the funding aspect of the statute.

It is not within this court's power to release appellants from their statutory obligations simply because the task given them by the Legislature proves difficult or costly in Fresno County. Here, by the language and legislative background of the statute, the Legislature unmistakably intended to prohibit the use of jails as TB detention facilities even though the restriction might place a burden on a particular county to identify and fund a different housing option. Subdivision (b) of the statute specifically acknowledges and addresses this burden by placing a corresponding duty upon DHS to work with the local health officers to identify proper placements for noncompliant TB

patients. (§ 121358, subd. (b).) The trial court did not err in finding that appellants violated section 121358 by placing Souvannarath in the county jail.

DISPOSITION

The judgment is affirmed. Respondent is awarded appellate costs.

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Dibiaso, J.

WE CONCUR:

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Ardaiz, P.J.

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Reed, J. †

† Judge of the Tulare Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Filed 2/1/02

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

HONGKHAM SOUVANNARATH, Plaintiff and Respondent, v. DAVID HADDEN et al. Defendants and Appellants.	F035228 (Super. Ct. No. 633425-4) **ORDER GRANTING REQUEST FOR PUBLICATION**

It appearing that the nonpublished opinion filed in the above entitled matter on the 3rd day of January, 2002, meets the standards for publication specified in California Rules of Court, rule 976(b), it is ordered that the opinion be certified for partial publication in the official reports.

_____
Dibiaso, J.

I CONCUR:

_____
Ardaiz, P.J.

Filed 2/1/02

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

HONGKHAM SOUVANNARATH, Plaintiff and Respondent, v. DAVID HADDEN et al. Defendants and Appellants.	F035228 (Super. Ct. No. 633425-4) **MODIFICATION OF OPINION** [NO CHANGE IN JUDGMENT.]

The typewritten opinion filed in the above entitled action on January 3, 2002, is modified as follows:

1. On the cover page, the words "**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**" are deleted and the following are inserted in their place along with the footnote:

CERTIFIED FOR PARTIAL PUBLICATION*

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of Parts I and III.

2. On page 16, footnote 8 is deleted.

3. There is no change in judgment.

_____
Dibiaso, J.

I CONCUR:

_____
Ardaiz, P.J.